

Court of Appeals, State of Michigan

ORDER

People of MI v James Michael Bellville

Docket No. 268790

LC No. 04-000619-FH

Janet T. Neff
Presiding Judge

David H. Sawyer

Michael R. Smolenski
Judges

The motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(D)(2), in lieu of granting the delayed application for leave to appeal, the May 10, 2005 judgment of sentence is VACATED. The upper limit of defendant's guidelines range was 11 months and, therefore, pursuant to MCL 769.34(4)(a), the circuit court was obligated to impose an intermediate sanction, such as a jail term not to exceed the upper limit of the recommended minimum sentence range or 12 months, whichever is less, absent substantial and compelling reasons to warrant a prison sentence. See also *People v Martin*, 257 Mich App 457, 460 n 3; 668 NW2d 397 (2003). An intermediate sanction does not include a prison term. *People v Stauffer*, 465 Mich 663, 635; 640 NW2d 869 (2002). The circuit court did not acknowledge that the prison sentence imposed constituted a departure from the guidelines and did not identify substantial and compelling reasons warranting a prison sentence. Accordingly, the matter is REMANDED to the circuit court for resentencing consistent with MCL 769.34(4)(a).

We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 25 2006

Date

Sandra Schultz Mengel
Chief Clerk